

April 14, 2017

John Zadrozny  
Domestic Policy Council  
Executive Office of the President  
Eisenhower Executive Office Building  
1650 Pennsylvania Ave NW  
Washington, DC 20502

Mr. Zadrozny,

Once again I want to express my appreciation for your time last week and the invitation to share our thoughts and recommendations about creating a more efficient regulatory environment for our business to operate. The willingness of this Administration to gather input from companies like ScottsMiracle-Gro is refreshing. As I shared with you when we met, we often feel as if President Trump is talking about our company when he discusses the burden of an uncompetitive tax rate and the time consuming and costly regulatory framework that has grown worse over time.

To be sure, these challenges have made it more difficult to grow our business. I remain hopeful that we can create an ongoing dialogue with the Administration on these and other topics, including direct interaction between President Trump and EPA Administrator Scott Pruitt with our CEO, Jim Hagedorn, as well as myself and other members of our leadership team. Our company, which has employees in 42 states and derives more than 90 percent of its profit from the United States, has been operating in Marysville, Ohio since 1868 and is home to some of America's most iconic brands. I am confident our knowledge of the consumer marketplace would be valuable in the broader discussion of driving a higher level of economic growth.

We share the thoughts outlined in this document with a simple goal in mind: to drive higher growth that allows us to increase our investment in innovation, which will drive even more growth that enables us to create jobs, enhance shareholder value and support the communities where we live and work. All of these will play a role in stimulating the American economy.

Before I share our recommendations, I want to reinforce an important point: We support a robust regulatory framework that protects consumers and the environment. As the leader in the lawn and garden industry, we know our consumers physically interact with the environment every time they use our products. As gardeners ourselves, we share their love of nature. As a responsible corporate citizen, we also support the work of environmental groups around the country as evidenced by our formal partnerships with more than twenty environmental NGOs. These are among the reasons we also support the dedicated work of the career staff of the EPA who work every day to support the Agency's mission. We are especially appreciative of those who work in the EPA's Office of Pesticide Programs, which operates a critical product-licensing program that is essential to the success of our business.

With that said, we respectfully submit that the Agency's approach has grown overly burdensome with time. This has made it more difficult for consumers to make informed decisions and more costly and complicated than necessary to bring new products to market. Finally, we submit that some of the regulation in our industry serves no useful purpose at all and could be eliminated, benefitting U.S. taxpayers without risking consumer safety or the environment. It is through that perspective that we offer these four recommendations:

### 1) Improve the pesticide label to help the consumer

We constantly are evaluating ways to improve our interactions with consumers. Our product labels provide the most direct way to communicate. We respectfully submit that the EPA's approach to product labeling is often unclear to the public and makes it more difficult for consumers to learn about products so they can make informed purchase decisions. This view is reinforced by consumer research that tells us the following:

- ✓ Consumers view pesticides as a necessity and not a discretionary purchase. However, roughly 30 percent of them walk away without making a purchase in part because they are confused about what to buy.
- ✓ More than 60 percent of consumers want to know the product they are buying is safe for use around their children or pets. This question is on their minds when they shop and they expect the label easily answer this question.
- ✓ More than 40 percent of consumers have difficulty deciding which pesticide to buy. They want the product label to help them conduct a side-by-side comparison of pesticide products when making a purchase, just like they do with most other household products.

We submit that these consumer frustrations exist, in part, because of the EPA's labeling requirements. To improve consumer knowledge, we suggest the following improvements:

- **Allow the use of consumer friendly language instead of scientific phrases and jargon that most consumers do not understand.** Labels intended for consumer use are required to have the same language as those purchased in agriculture, where the purchaser is far more knowledgeable about the product and active ingredient. This one-size-fits-all approach negatively impacts the ability of consumers to make informed decisions. The adoption of "Plain English" standards should be applied to consumer pesticide labels.
- **Allow for clear communication of product benefits, including claims like "safer for the environment."** Product improvements like safer active ingredients often come at a higher cost to the manufacturer. Because EPA guidelines prohibit the use of words like "safer," the consumer has no way of gaining this knowledge. This creates an economic disincentive to innovate because the prohibitive language makes it difficult to convince consumers these products warrant a higher price.
- **Eliminate unnecessary language on the label that intimidates consumers, prompting many of them to not read the label at all.** Our research tells us that a small percentage of consumers fully read the label of a pesticide before using it, and research conducted by EPA supports this position. We believe the number of words on most labels could be significantly reduced and actually *improve* the label at the same time. This would result in more consumers reading and understanding the directions prior to use.

Consumer pesticides are subject to different standards than other consumer products used around the home. Many items used in American households are regulated by the Consumer Product Safety Commission (CPSC), which is charged with protecting consumers from products that pose a fire, electrical, chemical, or mechanical hazard. Many of these products also have some level of risk associated with them. In fact, some are actually far more toxic than many pesticides sold to American consumers. Despite this fact, these products are *not* subject to the same overly restrictive language that is required on EPA approved labels. This inconsistency makes no sense. For the purpose of this discussion only, we have taken the liberty to redesign some current labels to highlight what they might look like if developed to conform with CPSC requirements. These are attached in a separate document and we welcome the opportunity to explain why such changes would be so important in our industry.

## **2) Make clear that the FTC, not EPA, regulates advertising**

The challenges outlined above are made even more difficult because of the EPA's ever-expanding view of its jurisdiction over advertising, including digital communications such as websites and social media platforms. We disagree with this view and submit this is a clear overreach not supported by law. Nonetheless, the Agency has recently litigated against a registrant for truthful claims made in television commercials because those claims were not part of the approved EPA label.

Registrants need to be able to communicate effectively with their consumers including a description of how and to what extent their products work, particularly in comparison to competing products. EPA seems less concerned with the veracity of the claims – i.e. whether or not they can in fact be substantiated – and more concerned about whether or not they were “approved” on the Master Label. EPA takes this position despite a policy prohibiting the approval of comparative claims on the Master Label and even though EPA waives the requirement for registrants to submit efficacy data to support many performance claims on the pesticide label. The waiver was implemented in an attempt to conserve agency resources so that EPA is not bogged down in reviewing extensive studies and literature to support every possible claim that a registrant may want to make. EPA's recent view of its jurisdiction on advertising not only undermines this prudent attempt to conserve resources but leaves registrants with two options: (1) submit each and every proposed advertising performance claim for review and approval on the Master Label, requiring EPA to incur the cost of reviewing each to ensure they are supported by reliable scientific data, meanwhile significantly slowing down the registration process; or (2) elect not to submit such claims to EPA and face potential compliance challenges any time the registrant wishes to communicate to its consumers how the product works, even where such claims are truthful.

This issue is presenting an even greater challenge in the rapidly evolving area of social media when consumers require instantaneous and truthful answers from the companies with whom they conduct business. A consumer standing at the retail shelf who Tweets the question “is this product safe to use around my dog?” should receive a simple answer, whether it be “yes” or “no.” If the answer is “no,” then the consumer should expect the company to offer the suggestion “use Product X instead.”

Clearly, what American consumers in an era of social media do *not* want are complicated answers that are written by lawyers in order to comply with overreach from the federal government. As nearly one-third of our marketing dollars are now committed to digital communications, it is imperative that this issue be resolved in a way that reflects the reality of today's technology driven world. To that end, we respectfully submit the following:

- **The Administration should make clear that authority for advertising and digital communications resides exclusively with the Federal Trade Commission.** The FTC exists to protect the public from false and misleading advertising claims, and is therefore duplicative to what the EPA is also trying to regulate. Clarity on this issue would save EPA registrants literally millions of dollars annually and greatly improve our relationship and reputation with the consumers who buy our products.

### **3) Fix the Registration Process**

The EPA has an important mandate to protect consumers and the environment under the federal pesticide law, the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). It takes years of research and resources to obtain approval from EPA of an initial product registration. We believe this rigor is justified.

That said, the process for amending, revising or updating an existing registration is inflexible and simply broken. These problems have grown worse in recent years as the Agency, we respectfully submit, has overreached its authority and/or reduced staffing in critical areas. These actions have created unnecessary and expensive delays in bringing products to market and created an uncertain business climate for companies operating in under this regulatory framework, including ScottsMiracle-Gro.

In 2004, we supported the creation of PRIA (Pesticide Registration Improvement Act) a fee-for-service structure that allows industry to help defray the costs of the agency to register products and established statutory timelines for decisions. This support does not imply an expectation that EPA will approve every application, but that it *will* provide a ‘yes’ or ‘no’ response in a timely fashion. Because PRIA activities are reported to Congress annually, there is a public scorecard to demonstrate whether EPA is meeting its timelines.

While PRIA has largely worked as designed, those areas of the registration process that fall outside of PRIA have suffered demonstrably. EPA staff has told us that limited resources are often shifted to focus on PRIA activities because of the reporting requirement to Congress. This reallocation of resources has meant that processes known as “Notifications” and, ironically, “Fast Track Amendments” – which are designed to accommodate minor changes to previously approved labels – have become bogged down in bureaucracy.

At a high level, “notifications” were created to execute non-substantive changes to a registration, typically the modification of a few words on a previously approved product label. In recent years, the Agency has given itself the right to use the notification process to re-evaluate the label in its entirety, even though companies self-certify that no other changes have been made to that label. Fast Track Amendments are exactly what the name implies: a quick (no more than 90 days) process to make slightly more extensive changes to labels already approved by the EPA. These tasks also are not tracked under the PRIA guidelines. At present, our company has five pending “Fast Track” amendments where decisions are four to six months late. Given the seasonal nature of our business, these delays cost a full business cycle, perhaps even two, before we can make a routine change to a previously approved label.

To remedy these problems, we respectfully submit two possible solutions:

- **Hold the Agency accountable for the deadlines established in FIFRA regardless of whether those actions are included in a scorecard reported to Congress.** This change will create a more

stable and predictable business climate, allowing registrants to create sales and marketing plans that are often done in conjunction with retail outlets or other business partners such as distributors.

- **Expand the entire registration process to allow a broader fee-based system so long it has established and rigid guidelines.** This approach already exists under PRIA and would essentially create a cost neutral outcome for the Agency. The action would likely draw the support from others in industry as it would provide a higher level of predictability, even if this concept is only applied to a set of registrations or amendment processes.

#### 4) Streamline Processes and Paperwork

The EPA has the important job of protecting the public and it has a number of functions specifically designed towards that purpose. Over time, that mission has wandered and diverged into processes and paperwork that, we submit, no longer serve those end goals. We propose eliminating these activities to save extraneous efforts and realign them to more productive outcomes.

- **Modify the regulation of the Registration Review process for all active ingredients and instead utilize the process only when there is evidence of a need of review.** The Registration Review process requires that all active ingredients be reviewed every fifteen years. These reviews are required by statute and are performed regardless of whether new science has been presented that would suggest a new review is actually warranted. In other words, most active ingredients sold in the market today have been repeatedly reviewed and re-registered by the Agency, a redundant, time-consuming and costly process. It takes a team of EPA personnel to process this work, which seldom results in a change from previous conclusions. We suggest that such reviews only be conducted when significant new information about an active ingredient becomes known to the Agency. Eliminating this process would allow the Agency to reassign the majority of the staff doing this work to perform other tasks that support the mission of the Agency. For example, recent questions about the potential impact of a class of pesticides known as neonicotinoids on bee health triggered a special review, which is still ongoing. This example highlights that this approach would allow EPA to address pressing questions about registered products while eliminating reviews that may not be needed at that time.
- **Eliminate select forms and reporting that does not add value to the core EPA mission of protecting the environment.** In addition to streamlining processes, eliminating forms and paperwork that do not protect the public or provide any additional information needed by the Agency would provide additional resources for the most important functions. We would suggest the following reports and forms be immediately ended to allow EPA to focus on other important tasks: Final Printed Labels (FPLs), Foreign Purchaser Acknowledgement Statements (FPAS), Pesticide Industry Sales and Usage Report and Pesticide Establishment Reporting.

Before closing, I want to reiterate our belief that regulation in our industry is important and that we support a healthy and well-funded EPA, especially the Office of Pesticide Programs. After leaving your office last week, I also met with newly appointed members of the EPA staff who said the Agency intends to recommit itself to a science-based approach to regulation and conduct business within the framework of existing law. Such an approach would be a refreshing change. As I have stated many times in this memo, we respectfully submit that the Agency has given itself more authority in recent years and has overstepped the authority that was actually intended by Congress.

I am hopeful that the completeness of the explanations I have provided you in this document show the seriousness with which we view these issues. As the largest seller of lawn and garden pesticides to consumers in the U.S., we know a productive relationship with the EPA is critical to our ongoing success. However, we agree whole-heartedly with President Trump that businesses like ours have become overly burdened by costly and unnecessary regulation.

Again, thank you for the opportunity to provide our thoughts to you. I will reach out to you in the days ahead and look forward to the opportunity to share our views with other members of the Administration, including Administrator Pruitt and members of his leadership team. I believe we can participate in a constructive and productive discussion on how to improve and enhance EPA operations to best serve our citizens and protect the environment.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim King", with a stylized, cursive script.

Jim King  
Senior Vice President, Corporate Affairs  
Chief Communications Officer  
The Scotts Miracle-Gro Company